



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

December 1, 2004

Ryezak Oil Company
Attn: Mr. Robert Comeau
PO Box 355
Rumney, NH 03266-0355

**NOTICE OF DECISION
ADMINISTRATIVE FINE
DOCKET NO. AF 03-036
(WASTE MANAGEMENT DIVISION)**

Dear Mr. Comeau:

As you are aware, by Notice of Proposed Administrative Fine No. AF 03-036 issued September 23, 2003, the New Hampshire Department of Environmental Services Waste Management Division ("DES") sought administrative fines totaling \$2,400 against Ryezak Oil Company ("Ryezak") for alleged violations of Env-Wm 1402.05, Env-Wm 1402.12(d), and Env-Wm 1402.18(e) on property located at Ryezak Oil Company, Rte 25, Rumney, NH ("the Property").

Based on my review of the evidence presented at the hearing held on this matter on September 27 2004, I have concluded that a fine of \$2,400 is appropriate as set forth below:

- ▶ A fine in the amount of \$1,500 is imposed against Ryezak for failing to register an approximately 500-gallon above ground storage tank storing off-road kerosene as required by Env-Wm 1402.05.
- ▶ A fine in the amount of \$400 is imposed against Ryezak for failing to stencil mark a 15,000-gallon above ground storage tank as "out of service" as required by Env-Wm 1402.12(d).
- ▶ A fine in the amount of \$500 is imposed against Ryezak for failing to mark the off-road kerosene tank with the tank number; the appropriate national fire rating system symbol as established by NFPA-704, Identification of Fire Hazards and Materials; and the safe fill height of the tank as required by Env-Wm 1402.18(e).

This decision is based on the following findings and conclusions:

1. RSA 146-A authorizes DES to minimize contamination of the waters and land of the state due to improper storage and handling of petroleum by establishing requirements for the operation of aboveground petroleum storage facilities. Pursuant to RSA 146-A:11-c, the Commissioner of DES has adopted NH Administrative Rules Env-Wm 1402 to implement this program.
2. RSA 146-A:15 authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-A, including any rule adopted pursuant thereto.

Pursuant to RSA 146-C:15, the Commissioner of DES has adopted Env-C 615 to establish the schedule of fines for such violations relating to aboveground storage tanks ("AST").

3. Robert Comeau is an individual having a mailing address of PO Box 355, Rumney, NH 03266.
4. Ryezak is a corporation registered to do business in New Hampshire having a mailing address of PO Box 355, Rumney, NH 03266.
5. Ryezak Oil Co. is a facility owned by Robert Comeau having five (5) ASTs: one 15,000-gallon diesel tank; one 15,000-gallon kerosene tank; one 20,000-gallon #2 heating oil tank; one 15,000-gallon #2 heating oil tank; and one 500-gallon off road kerosene fuel tank located at Rte 25, Rumney, NH, and further identified by the DES site number 199707033 and the AST identification number 970733A ("the Facility").
6. The AST systems at the Facility are subject to the requirements of RSA Chapter 146A and NH Administrative Rules Env-Wm 1402.
7. Env-Wm 1402.05 requires the owner of an AST facility to accurately register all AST systems at the facility with DES.
8. Env-Wm 1402.12(d) requires out of service ASTs to be prominently stenciled with the words "out of service" in large, easily visible block letters.
9. Env-Wm 1402.18(e) requires AST systems to be marked with the tank number corresponding to the tank number specified on the registration form, appropriate NFPA fire rating symbol, and the safe fill height or volume. Tank lettering shall be at least 2 inches in height and in a color contrasting with the color of the tank.
10. An inspection by DES personnel of the facility on June 12, 2000, revealed that the 15,000-gallon #2 heating oil AST that was removed from service in June 1991 was not marked as "out of service".
11. DES notified Ryezak Oil Company of the deficiencies identified in Section 10 above in a letter dated June 27, 2000. In the June 27, 2000 letter Ryezak Oil Company was allowed 45-days to correct the noted deficiency in order to avoid enforcement action.
12. An inspection by DES personnel of the facility on December 4, 2002, revealed that the approximately 500-gallon AST storing off-road kerosene is not registered with DES, the 15,000-gallon #2 heating oil AST that was removed from service in June 1991 was not marked as "out of service", and that the approximately 500-gallon AST storing off-road kerosene is not marked with the tank number, NFPA fire rating symbol, and the safe fill height or volume.

13. DES notified Ryezak Oil Company of the deficiencies identified in Section 12 above in a letter dated December 4, 2002. In the December 4, 2002 letter Ryezak Oil Company was allowed 45-days to correct the noted deficiencies in order to avoid enforcement action.

14. DES notified Ryezak Oil Company in a letter dated May 13, 2003 that DES would initiate administrative fine proceedings in 30 days for the deficiencies identified in Section 12 above if not corrected.

15. DES personnel again inspected the facility on July 29, 2003, and found that the deficiencies identified in Section 12 above were not corrected.

16. On September 23, 2003, DES issued a Notice of Proposed Administrative Fine No. AF 03-036 ("the Notice") to Ryezak Oil Company seeking fines totaling \$2,400 for violations of statutes and rules governing aboveground petroleum storage tank facilities.

17. Specifically, the Notice cited Ryezak Oil Company for violating Env-Wm 1402.05 by failing to register the approximately 500-gallon AST storing off-road kerosene. For this violation, Env-C 615.02(a) specifies a fine of \$1500 per requirement that is not met per system.

18. Specifically, the Notice cited Ryezak Oil Company for violating Env-Wm 1402.12(d) by failing to stencil mark the 15,000-gallon AST as "out of service". For this violation, Env-C 615.04(c) specifies a fine of \$400 per requirement that is not met.

19. Specifically, the Notice cited Ryezak Oil Company for violating Env-Wm 1402.18(e) by failing to mark the approximately 500-gallon off-road kerosene tank with the tank number, appropriate national fire rating system symbol as established by NFPA-704, Identification of Fire Hazards and Materials, and with the safe fill height of the tank pursuant to Env-Wm 1402.18(e). For this violation, Env-C 615.02 specifies a fine of \$500 for each standard that is not met per tank.

20. DES notified Ryezak Oil Company in a letter dated July 29, 2004 that a hearing was scheduled for September 27, 2004, at 2:30 P.M. in Room C-110 of DES at 29 Hazen Drive, in Concord, NH for Proposed Administrative Fine AF 03-036.

21. Based on the evidence presented at hearing on September 28, 2004 DES has proved by a preponderance of evidence that Ryezak Oil Company has committed the violations alleged in the Notice. Exhibits 1 and 2 document the results of DES inspections of the Facility on June 12, 2000, and December 4, 2002, including the above-described violations relating to the unregistered and unmarked 500 gallon off-road kerosene tank and the improperly marked "out of service" 15,000 gallon AST. Mr. Comeau acknowledged (or at least did not dispute) at the hearing that he received the Departments several notices concerning these violations. He also did not dispute that the violations occurred.

22. Mr. Comeau testified to a general awareness of the state regulatory requirements for ASTs. Being in the fuel oil business, the general public can reasonably expect Ryezak to have a working knowledge of state environmental regulations governing the proper operation of ASTs. The Oil Remediation and Compliance Bureau gave Ryezak three written warnings (June 27, 2000, December 4, 2002, and May 13, 2003) over a period of two years to correct the deficiencies before recommending administrative fines on September 23, 2003. As of the date of the hearing on September 27, 2004, the deficiencies still had not been corrected. The assessment of the fines proposed by the program, totaling \$2,400, are reasonable and appropriate.

The \$2,400 fine shall be paid within 30 days of the date of the decision. Fine payments shall be by certified check or money order payable to "Treasurer-State of NH" and sent to the attention of the Legal Unit, DES/Office of the Commissioner, PO Box 95, Concord, NH 03302-0095.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with NH RSA 541 and Env-C 206 (copy enclosed).

COMMISSIONER OF ENVIRONMENT SERVICES

By:


Michael J. Walls, Presiding Officer

cc: Michael P. Nolin, Commissioner
Anthony P. Giunta, P.G., Director, Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Michael W. Juranty, P.E., DES WMD
Public Information Officer, DES PIP

PART Env-C 206 MOTIONS FOR RECONSIDERATION

Env-C 206.01 Purpose. The rules in this part are intended to supplement any statutory provisions, such as RSA 541, which require or allow a person to request reconsideration of a decision of the department prior to appealing the decision. These rules do not create the right to request reconsideration of a decision where it does not otherwise exist under law.

Source. #6960, eff 3-25-99

Env-C 206.02 Applicability. The rules in this part shall apply whenever any person has a right under applicable law to request a reconsideration of a decision prior to filing an appeal of the decision with the applicable court or council having appellate jurisdiction.

Source. #6960, eff 3-25-99

Env-C 206.03 Time for Filing. As specified in RSA 541:3, any motion for reconsideration shall be filed no later than 30 days after the date the decision that is the subject of the motion was issued.

Source. #6960, eff 3-25-99

Env-C 206.04 Filing.

(a) Any person wishing to request reconsideration of a decision of the commissioner shall file the original and 2 copies of a motion for reconsideration at the following address:

Office of the Commissioner, Enforcement Unit

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(b) Any person wishing to request reconsideration of a decision of a division relating to a matter for which the commissioner has delegated the decision-making authority to the division shall file the original and 2 copies of a motion for reconsideration with the director of the division at the following address:

Department of Environmental Services

29 Hazen Drive

Concord, NH 03301

(c) For purposes of this section, a "decision of the commissioner" means a decision that is signed by the commissioner, or by the assistant commissioner on behalf of the commissioner, either alone or in conjunction with a division director, such as an administrative order.

(d) For purposes of this section, a "decision of a division" means a decision that is signed by a division director or other authorized division staff, but not signed by the commissioner or by the assistant commissioner on behalf of the commissioner, such as a decision to issue or deny a permit.

Source. #6960, eff 3-25-99

Env-C 206.05 Format and Content of Motion. The person filing a motion for reconsideration shall provide the following information:

- (a) The exact legal name of each person moving for reconsideration and the residence address or principal place of business of the person;
- (b) A clear and concise statement of the reason(s) why the person believes the decision to be in error;
- (c) A concise and explicit statement of the facts upon which the department is expected to rely in granting relief;
- (d) A clear and concise statement of the specific relief or ruling requested;
- (e) A copy of the decision which is the subject of the motion; and
- (f) Such other information as the party filing the motion deems pertinent and relevant, including sworn written testimony and other evidence that was not available for the hearing.

Source. #6960, eff 3-25-99